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## United States Senate

WASHINGTON, D.C. 20510

September 16, 1967

Executive Registry

67-4014/14

MEMBER:

APPROPRIATIONS COMMITTEE

FOREIGN RELATIONS COMMITTEE

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SENATE INVESTIGATIONS SUBCOMMITTEE

ADVISORY COMMISSION ON  
INTERGOVERNMENTAL RELATIONS

### PERSONAL

Mr. Richard Helms, Director  
Central Intelligence Agency  
Washington, D. C. 20505

Dear Dick:

Your note of September 7, transmitting a copy of the letter which you wrote to Senator Russell of Georgia on September 1, reached my desk while I was out in South Dakota for the Labor Day recess of Congress.

I do, however, want to take this means of informing you that I completely agree with the reasoning and logic contained in your letter to Chairman Russell. I am very hopeful that the modifications and the legislative history on the legislation as it passed the Senate earlier this week will combine to induce the conference between the House and Senate conferees to protect the very proper interests of the C. I. A. in this legislation. It is my continuing opinion that in the selection and management of the personnel of our Central Intelligence Agency, those in charge of it should be provided with every opportunity to make certain that our national security is completely protected.

Thanking you for writing me as you did, and with warmest personal regards, I am

Cordially yours,

*Karl E. Mundt*  
Karl E. Mundt  
U. S. Senator

KEM:rf

90TH CONGRESS  
1ST SESSION

# S. 1035

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 1967

Referred to the Committee on Post Office and Civil Service

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## AN ACT

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. It shall be unlawful for any officer of any  
4 executive department or any executive agency of the United  
5 States Government, or for any person acting or purporting  
6 to act under his authority, to do any of the following things:

7 (a) To require or request, or to attempt to require or  
8 request, any civilian employee of the United States serving  
9 in the department or agency, or any person seeking employ-

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1 ment in the executive branch of the United States Govern-  
2 ment, to disclose his race, religion, or national origin, or  
3 the race, religion, or national origin of any of his fore-  
4 bears: *Provided, however,* That nothing contained in this  
5 subsection shall be construed to prohibit inquiry concerning  
6 the citizenship of any such employee or person if his citizen-  
7 ship is a statutory condition of his obtaining or retaining his  
8 employment: *Provided further,* That nothing contained in  
9 this subsection shall be construed to prohibit inquiry concern-  
10 ing the national origin of any such employee when such in-  
11 quiry is deemed necessary or advisable to determine suit-  
12 ability for assignment to activities or undertakings related to  
13 the national security within the United States or to activities  
14 or undertakings of any nature outside the United States.

15 (b) To state or intimate, or to attempt to state or inti-  
16 mate, to any civilian employee of the United States serving  
17 in the department or agency that any notice will be taken of  
18 his attendance or lack of attendance at any assemblage, dis-  
19 cussion, or lecture held or called by any officer of the execu-  
20 tive branch of the United States Government, or by any per-  
21 son acting or purporting to act under his authority, or by any  
22 outside parties or organizations to advise, instruct, or in-  
23 doctrinate any civilian employee of the United States serving  
24 in the department or agency in respect to any matter or  
25 subject other than the performance of official duties to which  
26 he is or may be assigned in the department or agency, or

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1 the development of skills, knowledge, or abilities which  
2 qualify him for the performance of such duties: *Provided*,  
3 *however*, That nothing contained in this subsection shall be  
4 construed to prohibit taking notice of the participation of a  
5 civilian employee in the activities of any professional group  
6 or association.

7 (c) To require or request, or to attempt to require or  
8 request, any civilian employee of the United States serving  
9 in the department or agency to participate in any way in  
10 any activities or undertakings unless such activities or under-  
11 takings are related to the performance of official duties to  
12 which he is or may be assigned in the department or agency,  
13 or to the development of skills, knowledge, or abilities which  
14 qualify him for the performance of such duties.

15 (d) To require or request, or to attempt to require  
16 or request, any civilian employee of the United States serv-  
17 ing in the department or agency to make any report con-  
18 cerning any of his activities or undertakings unless such  
19 activities or undertakings are related to the performance of  
20 official duties to which he is or may be assigned in the  
21 department or agency, or to the development of skills, knowl-  
22 edge, or abilities which qualify him for the performance of  
23 such duties, or unless there is reason to believe that the  
24 civilian employee is engaged in outside activities or employ-  
25 ment in conflict with his official duties.

1 (e) To require or request, or to attempt to require or  
2 request, any civilian employee of the United States serving  
3 in the department or agency, or any person applying for  
4 employment as a civilian employee in the executive branch  
5 of the United States Government, to submit to any interroga-  
6 tion or examination or to take any psychological test which  
7 is designed to elicit from him information concerning his  
8 personal relationship with any person connected with him  
9 by blood or marriage, or concerning his religious beliefs  
10 or practices, or concerning his attitude or conduct with re-  
11 spect to sexual matters: *Provided, however,* That nothing  
12 contained in this subsection shall be construed to prevent  
13 a physician from eliciting such information or authorizing  
14 such tests in the diagnosis or treatment of any civilian  
15 employee or applicant where such physician deems such  
16 information necessary to enable him to determine whether  
17 or not such individual is suffering from mental illness: *Pro-*  
18 *vided further, however,* That this determination shall be made  
19 in individual cases and not pursuant to general practice or  
20 regulation governing the examination of employees or appli-  
21 cants according to grade, agency, or duties: *Provided further,*  
22 *however,* That nothing contained in this subsection shall be  
23 construed to prohibit an officer of the department or agency  
24 from advising any civilian employee or applicant of a specific  
25 charge of sexual misconduct made against that person, and  
26 affording him an opportunity to refute the charge.

1 (f) To require or request, or attempt to require or  
2 request, any civilian employee of the United States serving  
3 in the department or agency, or any person applying for  
4 employment as a civilian employee in the executive branch  
5 of the United States Government, to take any polygraph  
6 test designed to elicit from him information concerning his  
7 personal relationship with any person connected with him  
8 by blood or marriage, or concerning his religious beliefs or  
9 practices, or concerning his attitude or conduct with respect  
10 to sexual matters.

11 (g) To require or request, or to attempt to require  
12 or request, any civilian employee of the United States serving  
13 in the department or agency to support by personal endeavor  
14 or contribution of money or any other thing of value the  
15 nomination or the election of any person or group of persons  
16 to public office in the Government of the United States or of  
17 any State, district, Commonwealth, territory, or possession  
18 of the United States, or to attend any meeting held to pro-  
19 mote or support the activities or undertakings of any political  
20 party of the United States or of any State, district, Common-  
21 wealth, territory, or possession of the United States.

22 (h) To coerce or attempt to coerce any civilian  
23 employee of the United States serving in the department or  
24 agency to invest his earnings in bonds or other obligations  
25 or securities issued by the United States or any of its depart-

1 ments or agencies, or to make donations to any institution  
2 or cause of any kind: *Provided, however,* That nothing con-  
3 tained in this subsection shall be construed to prohibit any  
4 officer of any executive department or any executive agency  
5 of the United States Government, or any person acting or  
6 purporting to act under his authority, from calling meetings  
7 and taking any action appropriate to afford any civilian em-  
8 ployee of the United States the opportunity voluntarily to  
9 invest his earnings in bonds or other obligations or securities  
10 issued by the United States or any of its departments or  
11 agencies, or voluntarily to make donations to any institution  
12 or cause.

13 (i) To require or request, or to attempt to require  
14 or request, any civilian employee of the United States  
15 serving in the department or agency to disclose any items  
16 of his property, income, or other assets, source of income,  
17 or liabilities, or his personal or domestic expenditures or  
18 those of any member of his family or household: *Provided,*  
19 *however,* That this subsection shall not apply to any civilian  
20 employee who has authority to make any final determination  
21 with respect to the tax or other liability of any person, cor-  
22 poration, or other legal entity to the United States, or  
23 claims which require expenditure of moneys of the United  
24 States: *Provided further, however,* That nothing contained  
25 in this subsection shall prohibit the Department of the

1 Treasury or any other executive department or agency of  
2 the United States Government from requiring any civilian  
3 employee of the United States to make such reports as may  
4 be necessary or appropriate for the determination of his  
5 liability for taxes, tariffs, custom duties, or other obliga-  
6 tions imposed by law.

7 (j) To require or request, or to attempt to require  
8 or request, any civilian employee of the United States  
9 embraced within the terms of the proviso in subsection  
10 (i) to disclose any items of his property, income, or  
11 other assets, source of income, or liabilities, or his personal  
12 or domestic expenditures or those of any member of his  
13 family or household other than specific items tending to  
14 indicate a conflict of interest in respect to the perform-  
15 ance of any of the official duties to which he is or may be  
16 assigned.

17 (k) To require or request, or to attempt to require or  
18 request, any civilian employee of the United States serving  
19 in the department or agency, who is under investigation for  
20 misconduct, to submit to interrogation which could lead to  
21 disciplinary action without the presence of counsel or other  
22 person of his choice, if he so requests.

23 (l) To discharge, discipline, demote, deny promo-  
24 tion to, relocate, reassign, or otherwise discriminate in  
25 regard to any term or condition of employment of, any civil-



1   ian employee of the United States serving in the department  
2   or agency, or to threaten to commit any of such acts, by  
3   reason of the refusal or failure of such employee to submit  
4   to or comply with any requirement, request, or action made  
5   unlawful by this Act, or by reason of the exercise by such  
6   civilian employee of any right granted or secured by this  
7   Act.

8       SEC. 2. It shall be unlawful for any officer of the United  
9   States Civil Service Commission, or for any person acting  
10   or purporting to act under his authority, to do any of the  
11   following things:

12       (a) To require or request, or to attempt to require or  
13   request, any executive department or any executive agency  
14   of the United States Government, or any officer or employee  
15   serving in such department or agency, to violate any of the  
16   provisions of section 1 of this Act.

17       (b) To require or request, or to attempt to require or  
18   request, any person seeking to establish civil service status  
19   or eligibility for employment in the executive branch of the  
20   United States Government, or any person applying for em-  
21   ployment in the executive branch of the United States Gov-  
22   ernment, or any civilian employee of the United States  
23   serving in any department or agency of the United States  
24   Government, to submit to any interrogation or examination  
25   or to take any psychological test which is designed to elicit

1 from him information concerning his personal relationship  
2 with any person connected with him by blood or marriage,  
3 or concerning his religious beliefs or practices, or concerning  
4 his attitude or conduct with respect to sexual matters: *Pro-*  
5 *vided, however,* That nothing contained in this subsection  
6 shall be construed to prevent a physician from eliciting such  
7 information or authorizing such tests in the diagnosis or  
8 treatment of any civilian employee or applicant where such  
9 physician deems such information necessary to enable him  
10 to determine whether or not such individual is suffering  
11 from mental illness: *Provided further, however,* That this  
12 determination shall be made in individual cases and not pur-  
13 suant to general practice or regulation governing the exami-  
14 nation of employees or applicants according to grade, agency,  
15 or duties: *Provided further, however,* That nothing contained  
16 in this subsection shall be construed to prohibit an officer of  
17 the Civil Service Commission from advising any civilian  
18 employee or applicant of a specific charge of sexual miscon-  
19 duct made against that person, and affording him an oppor-  
20 tunity to refute the charge.

21 (c) To require or request, or to attempt to require  
22 or request, any person seeking to establish civil service  
23 status or eligibility for employment in the executive branch  
24 of the United States Government, or any person applying

1 for employment in the executive branch of the United States  
2 Government, or any civilian employee of the United States  
3 serving in any department or agency of the United States  
4 Government, to take any polygraph test designed to elicit  
5 from him information concerning his personal relationship  
6 with any person connected with him by blood or marriage,  
7 or concerning his religious beliefs or practices, or concerning  
8 his attitude or conduct with respect to sexual matters.

9 SEC. 3. It shall be unlawful for any commissioned officer,  
10 as defined in section 101 of title 10, United States Code, or  
11 any member of the Armed Forces acting or purporting to  
12 act under his authority, to require or request, or to attempt  
13 to require or request, any civilian employee of the executive  
14 branch of the United States Government under his authority  
15 or subject to his supervision to perform any of the acts or  
16 submit to any of the requirements made unlawful by section  
17 1 of this Act.

18 SEC. 4. Whenever any officer of any executive depart-  
19 ment or any executive agency of the United States Gov-  
20 ernment, or any person acting or purporting to act under his  
21 authority, or any commissioned officer as defined in section  
22 101 of title 10, United States Code, or any member of the  
23 Armed Forces acting or purporting to act under his author-  
24 ity, violates or threatens to violate any of the provisions of  
25 section 1, 2, or 3 of this Act, any civilian employee of the

1 United States serving in any department or agency of the  
2 United States Government, or any person applying for em-  
3 ployment in the executive branch of the United States Gov-  
4 ernment, or any person seeking to establish civil service  
5 status or eligibility for employment in the executive branch  
6 of the United States Government, affected or aggrieved by  
7 the violation or threatened violation, may bring a civil action  
8 in his own behalf or in behalf of himself and others simi-  
9 larly situated, against the offending officer or person in the  
10 United States district court for the district in which the viola-  
11 tion occurs or is threatened, or the district in which the  
12 offending officer or person is found, or in the United States  
13 District Court for the District of Columbia, to prevent the  
14 threatened violation or to obtain redress against the conse-  
15 quences of the violation. The Attorney General shall  
16 defend all officers or persons sued under this section  
17 who acted pursuant to an order, regulation, or directive,  
18 or who, in his opinion, did not willfully violate the  
19 provisions of this Act. Such United States district court  
20 shall have jurisdiction to try and determine such civil action  
21 irrespective of the actuality or amount of pecuniary injury  
22 done or threatened, and without regard to whether the  
23 aggrieved party shall have exhausted any administrative  
24 remedies that may be provided by law, and to issue such  
25 restraining order, interlocutory injunction, permanent in-

1 junction, or mandatory injunction, or enter such other judg-  
2 ment or decree as may be necessary or appropriate to prevent  
3 the threatened violation, or to afford the plaintiff and others  
4 similarly situated complete relief against the consequences of  
5 the violation. With the written consent of any person  
6 affected or aggrieved by a violation or threatened violation  
7 of section 1, 2, or 3 of this Act, any employee organization  
8 may bring such action on behalf of such person, or may  
9 intervene in such action. For the purposes of this section,  
10 employee organizations shall be construed to include any  
11 brotherhood, council, federation, organization, union, or pro-  
12 fessional association made up in whole or in part of civilian  
13 employees of the United States and which has as one of its  
14 purposes dealing with departments, agencies, commissions,  
15 and independent agencies of the United States concerning  
16 the condition and terms of employment of such employees.

17 SEC. 5. (a) There is hereby established a Board on  
18 Employees' Rights (hereinafter referred to as the "Board").  
19 The Board shall be composed of three members, appointed  
20 by the President, by and with the advice and consent of the  
21 Senate. The President shall designate one member as chair-  
22 man. No more than two members of the Board may be of  
23 the same political party. No member of the Board shall be  
24 an officer or employee of the United States Government.

25 (b) The term of office of each member of the Board

1 shall be five years, except that (1) of those members first  
2 appointed, one shall serve for five years, one for three years,  
3 and one for one year, respectively, from the date of enact-  
4 ment of this Act, and (2) any member appointed to fill  
5 a vacancy occurring prior to the expiration of the term for  
6 which his predecessor was appointed shall be appointed for  
7 the remainder of such term.

8 (c) Members of the Board shall be compensated at the  
9 rate of \$75 a day for each day spent in the work of the  
10 Board, and shall be paid actual travel expenses and per  
11 diem in lieu of subsistence expenses when away from their  
12 usual places of residence, as authorized by section 5703 of  
13 title 5, United States Code.

14 (d) Two members shall constitute a quorum for the  
15 transaction of business.

16 (e) The Board may appoint and fix the compensation  
17 of such officers, attorneys, and employees, and make such  
18 expenditures, as may be necessary to carry out its functions.

19 (f) The Board shall make such rules and regulations  
20 as shall be necessary and proper to carry out its functions.

21 (g) The Board shall have the authority and duty to  
22 receive and investigate written complaints from or on be-  
23 half of any person claiming to be affected or aggrieved by  
24 any violation or threatened violation of this Act and to con-  
25 duct a hearing on each such complaint. Within ten days

1 after the receipt of any such complaint, the Board shall  
2 furnish notice of the time, place, and nature of the hearing  
3 thereon to all interested parties. The Board shall render  
4 its final decision with respect to any complaint within thirty  
5 days after the conclusion of its hearing thereon.

6 (h) Officers or representatives of any Federal employee  
7 organization in any degree concerned with employment of  
8 the category in which any alleged violation of this Act  
9 occurred or is threatened shall be given an opportunity to  
10 participate in each hearing conducted under this section,  
11 through submission of written data, views, or arguments,  
12 and in the discretion of the Board, with opportunity for oral  
13 presentation. Government employees called upon by any  
14 party or by any Federal employee organization to participate  
15 in any phase of any administrative or judicial proceeding  
16 under this section shall be free to do so without incurring  
17 travel cost or suffering loss in leave or pay; and all such em-  
18 ployees shall be free from restraint, coercion, interference,  
19 intimidation, or reprisal in or because of their participation.  
20 Any periods of time spent by Government employees during  
21 such participation shall be held and considered to be Federal  
22 employment for all purposes.

23 (i) Insofar as consistent with the purposes of this sec-  
24 tion, the provisions of subchapter II of chapter 5 of title 5,  
25 United States Code, relating to the furnishing of notice and

1 manner of conducting agency hearings, shall be applicable  
2 to hearings conducted by the Board under this section.

3 (j) If the Board shall determine after hearing that a  
4 violation of this Act has not occurred or is not threatened,  
5 the Board shall state its determination and notify all inter-  
6 ested parties of such determination. Each such determina-  
7 tion shall constitute a final decision of the Board for pur-  
8 poses of judicial review.

9 (k) If the Board shall determine that any violation  
10 of this Act has been committed or threatened by any civil-  
11 ian officer or employee of the United States, the Board shall  
12 immediately (1) issue and cause to be served on such of-  
13 ficer or employee an order requiring such officer or employee  
14 to cease and desist from the unlawful act or practice which  
15 constitutes a violation, (2) endeavor to eliminate any such  
16 unlawful act or practice by informal methods of conference,  
17 conciliation, and persuasion; and (3) may—

18 (A) (i) in the case of the first offense by any  
19 civilian officer or employee of the United States, other  
20 than any officer appointed by the President, by and with  
21 the advice and consent of the Senate, issue an official  
22 reprimand against such officer or employee or order the  
23 suspension without pay of such officer or employee from  
24 the position or office held by him for a period of not to  
25 exceed fifteen days, and (ii) in the case of a second



1 or subsequent offense by any such officer or employee,  
2 order the suspension without pay of such officer or em-  
3 ployee from the position or office held by him for a  
4 period of not to exceed thirty days or order the removal  
5 of such officer or employee from such position or office;  
6 and

7 (B) in the case of any offense by any officer ap-  
8 pointed by the President by and with the advice and  
9 consent of the Senate, transmit a report concerning such  
10 violation to the President and the Congress.

11 (1) If the Board shall determine that any violation  
12 of this Act has been committed or threatened by any officer  
13 of any of the Armed Forces of the United States, or any  
14 person purporting to act under authority conferred by such  
15 officer, the Board shall (1) submit a report thereon to the  
16 President, the Congress, and the Secretary of the military  
17 department concerned, (2) endeavor to eliminate any un-  
18 lawful act or practice which constitutes such a violation by  
19 informal methods of conference, conciliation, and persuasion,  
20 and (3) refer its determination and the record in the case  
21 to any person authorized to convene general courts martial  
22 under section 822 (article 22) of title 10, United States  
23 Code. Thereupon such person shall take immediate steps  
24 to dispose of the matter under chapter 47 of title 10, United  
25 States Code (Uniform Code of Military Justice).

1 (m) Any party aggrieved by any final determination  
2 or order of the Board may institute, in the district court of  
3 the United States for the judicial district wherein the viola-  
4 tion or threatened violation of this Act occurred, or in the  
5 United States District Court for the District of Columbia,  
6 a civil action for the review of such determination or order.  
7 In any such action, the court shall have jurisdiction to (1)  
8 affirm, modify, or set aside any determination or order made  
9 by the Board which is under review, or (2) require the  
10 Board to make any determination or order which it is author-  
11 ized to make under subsection (k), but which it has refused  
12 to make. The reviewing court shall set aside any finding,  
13 conclusion, determination, or order of the Board as to which  
14 complaint is made which is unsupported by substantial evi-  
15 dence on the record considered as a whole.

16 (n) The Board shall submit, not later than March 31  
17 of each year, to the Senate and House of Representatives,  
18 respectively, a report on its activities under this section dur-  
19 ing the immediately preceding calendar year, including a  
20 statement concerning the nature of all complaints filed with  
21 it, its determinations and orders resulting from hearings  
22 thereon, and the names of all officers or employees of the  
23 United States with respect to whom any penalties have been  
24 imposed under this section.

25 (o) There are authorized to be appropriated sums nec-

1   essary, not in excess of \$100,000, to carry out the provisions  
2   of this section.

3       SEC. 6. Nothing contained in this Act shall be construed  
4   to prohibit an officer of the Central Intelligence Agency or  
5   of the National Security Agency or of the Federal  
6   Bureau of Investigation from requesting any civilian em-  
7   ployee or applicant to take a polygraph test, or to take a  
8   psychological test, designed to elicit from him information  
9   concerning his personal relationship with any person con-  
10   nected with him by blood or marriage, or concerning his  
11   religious beliefs or practices, or concerning his attitude or  
12   conduct with respect to sexual matters, or to provide a per-  
13   sonal financial statement, if the Director of the Central  
14   Intelligence Agency or his designee or the Director of the  
15   National Security Agency or his designee or the Director  
16   of the Federal Bureau of Investigation or his designee makes  
17   a personal finding with regard to each individual to be  
18   so tested or examined that such test or information is re-  
19   quired to protect the national security.

20       SEC. 7. Nothing contained in sections 4 and 5 shall be  
21   construed to prevent establishment of department and  
22   agency grievance procedures to enforce this Act, but the  
23   existence of such procedures shall not preclude any appli-  
24   cant or employee from pursuing the remedies established  
25   by this Act or any other remedies provided by law: *Pro-*

1 *vided, however, That if under the procedures established,*  
2 *the employee or applicant has obtained complete protection*  
3 *against threatened violations or complete redress for vio-*  
4 *lations, such action may be pleaded in bar in the United*  
5 *States District Court or in proceedings before the Board on*  
6 *Employee Rights: Provided further, however, That if an*  
7 *employee elects to seek a remedy under either section 4 or*  
8 *section 5, he waives his right to proceed by an independent*  
9 *action under the remaining section.*

10 SEC. 8. If any provision of this Act or the application  
11 of any provision to any person or circumstance shall be held  
12 invalid, the remainder of this Act or the application of such  
13 provision to persons or circumstances other than those as to  
14 which it is held invalid, shall not be affected.

Passed the Senate September 13, 1967.

Attest:

FRANCIS R. VALEO,

*Secretary.*

90TH CONGRESS  
1ST SESSION

**S. 1035**

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**AN ACT**

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

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SEPTEMBER 14, 1967

Referred to the Committee on Post Office and Civil Service